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NO. 07-319

IN THE
Supreme Court of the United States

WENDY JANE TITELMAN,
Petitioner,
v.

ANDREW CHARLES TITELMAN,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Georgia

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE JUSTICE FOR CHILDREN, NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, PARENTING PROJECT, CALIFORNIA PROTECTIVE PARENTS ASSOCIATION, COURAGEOUS KIDS NETWORK, AND VOICES OF WOMEN ORGANIZING PROJECT IN SUPPORT OF WENDY JANE TITELMAN'S PETITION FOR WRIT OF CERTIORARI

Lynne Liberato*
Alene Ross Levy
HAYNES AND BOONE, LLP
1221 McKinney, Suite 2100
Houston, Texas 77010-2007
Telephone: (713) 547-2000
Telecopier: (713) 547-2600

**Counsel of Record for Amici Curiae*

MOTION FOR LEAVE TO FILE AMICUS BRIEF

Justice for Children (JFC), National Coalition Against Domestic Violence (NCADV), Parenting Project, California Protective Parents Association (CPPA), Courageous Kids Network (CKN), and Voices of Women Organizing Project (VOW) move this Honorable Court under Rule 37 of the Rules of the Supreme Court of the United States for leave to file a brief of amici curiae in the above-entitled cause. Because of their extensive experience dealing with issues of child abuse and custody, amici can bring to the Court's attention matters not already presented by the parties.[1]

As required by Rule 37(2), amici further state that counsel of record for all parties was notified at least 10 days prior to the due date of amici curiae's

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[1] As required by Rule 37(6), amici states that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. Amici counsel, Lynne Liberato (counsel of record) and Alene Ross Levy of Haynes and Boone, LLP, have prepared this brief without monetary contribution from Justice for Children, National Coalition Against Domestic Violence, Parenting Project, California Protective Parents Association, Courageous Kids Network, Voices of Women Organizing Project, or any other entity, party or counsel. Justice for Children, National Coalition Against Domestic Violence, Parenting Project, California Protective Parents Association, Courageous Kids Network, Voices of Women Organizing Project, and Haynes and Boone, LLP have no monetary interest in the outcome of this case.

intention to file this brief. Petitioner has consented to the filing. However, at the time of printing, amici had received no objection or response from respondent's counsel. Therefore amici files this motion for leave in the event that an objection is forthcoming.

1. **Justice for Children (JFC)** is a national, nonprofit child advocacy organization with headquarters in Houston, Texas and offices in Washington D.C., Michigan and Arizona. JFC was founded in 1987 by Randy Burton, a former Chief Prosecutor of the Family Offenses Section of the Harris County (Texas) District Attorney's office, and a group of concerned citizens in response to inadequacies and failures of child protective systems to protect abused and neglected children. JFC is a 501(c)(3) organization funded primarily through individual and corporate donations and foundation grants.

2. JFC's first and only priority is children, and JFC is dedicated to ensuring the meaningful and informed application of the law for their protection. To that end, JFC works to develop and implement collaborative solutions to entrenched social and legal problems impeding the quality of our children's lives.

3. JFC advocates for protection of the rights of abused and neglected children in the justice system. JFC's mission is to protect these children from

further abuse and to defend each child's right to grow up in a safe and loving environment.

4. JFC strives to raise community awareness of the alarming extent and devastating consequences of child abuse. When appropriate, JFC opposes court or agency action that threatens to compound the abuse already suffered by these helpless victims.

5. **Parenting Project**, founded in 1996 at Mathewson Street United Methodist Church, is a volunteer community service organization that assists protective parents and their children in Rhode Island Family Court custody cases. Parenting Project has documented many Parental Alienation Syndrome cases that endanger children and protective parents.

6. **National Coalition Against Domestic Violence (NCADV)** has advocated for victims of domestic violence for nearly 30 years. It is seen as the leading expert on domestic violence in the country and has joined in numerous cases related to child custody and visitation orders as an Amicus Curiae.

7. **California Protective Parents Association (CPPA)** is a non-profit organization based in Sacramento, California that advocates for the safety and parental rights of abused children and their non-offending parents in family law litigation by providing research, education, and training for the state legislature, judiciary, and general public.

CPPA has initiated national research to document the phenomenon of fit parents (predominantly mothers) losing custody to abusive parents (predominantly fathers), with findings that American family law courts are failing to provide safety for children and due process for protective parents, and are judicially retaliating against the complaining victims with custody rulings that limit or prohibit contact between children who disclose abuse and their parents who seek protection for them in family court.

8. **Courageous Kids Network** is a national organization of youth who speak out about how their lives were destroyed after family courts forcibly removed them from the custody of their safe parents and ordered them into the custody of the abusive parents, and the profound sense of loss and emotional trauma they endured as a result of having to live in fear with their abusers, while being deprived of the love and comfort of their non-offending parents. The teen founders of Courageous Kids offer support to other similarly situated youngsters and make presentations at judicial seminars, family violence conferences, and legislative trainings to educate the government and the public on the need for family court reform.

9. **Voices of Women Organizing Project (VOW)**, is the first initiative of the Battered Women's Resource Center, a nonprofit that works to empower survivors of domestic violence, so that they can influence,

change, and improve the many systems battered women and their children rely on for safety and justice.

10. The issue before this Court is of substantial legal and social magnitude. At the heart of this case is an inherent conflict between a parent's duty to protect her children, including in most states a duty to report the child's allegations of sexual abuse, and the increasingly valid fear that reporting suspected abuse will result in the mother's loss of custody of the children because of "Parental Alienation Syndrome" ("PAS").[2]

11. The need for this Court's guidance cannot be overstated. Even though some states have "protective parent" laws prohibiting the changing of custody as "punishment" for reporting abuse, the shocking practice is nevertheless widespread. And in many states, "friendly parent laws" have effectively codified PAS, in direct conflict with protective parent provisions, by directing courts to give custody to the parent who appears to encourage a good relationship between the children and the other parent.

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[2] As amici's brief demonstrates, PAS is one man's discredited theory masquerading as a "psychological syndrome," under which abusive parents increasingly are obtaining sole custody of their victims. In many cases, including the present case, the protective parent's parental rights effectively are terminated and the children are denied all contact with that parent.

12. Cases decided under PAS and friendly parent laws are establishing a precedent that endangers the safety and health of our children nationwide because the laws silence protective parents and enable abusers. *See, e.g.*, A.C. Morrill, et al, *Child Custody and Visitation Decisions*, Vol. 11, No. 8, VIOLENCE AGAINST WOMEN 1076-1107 (2005). In addition, these laws completely ignore the best interest of the children, which, under all legal standards, should be paramount in custody decisions.

13. Through their experience and long standing commitment to children who may be forever scarred by abuse and neglect, amici have developed an expertise that can serve as a valuable resource for the Court as it considers the issues raised by this case.

14. In addition, Justice for Children's expert opinion is recognized and valued by local and national media, legal and medical professionals, child abuse experts, and other children's rights organizations.[3] Justice for Children has appeared as

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[3] For example, JFC has appeared on numerous national television shows, including ABC's Primetime Live, ABC's prime-time documentary entitled "Crimes Against Children," a PBS documentary entitled "Boy Crying, Baby Crying," as well as Good Morning America, Donahue, the Discovery Channel's "Justice Files," and HBO.

amicus curiae in numerous state courts throughout the country.[4]

Accordingly, Justice for Children, National Coalition Against Domestic Violence, Parenting Project, California Protective Parents Association, Courageous Kids Network, and Voices of Women Organizing Project respectfully request that this Honorable Court grant this motion for leave and order that the Brief of Amici Curiae Justice for Children, National Coalition Against Domestic Violence, Parenting Project, California Protective Parents Association, Courageous Kids Network, and Voices of Women Organizing Project in Support of Wendy Jane Titelman's Petition for Writ of Certiorari be filed among the papers in this cause.

Respectfully submitted,

Lynne Liberato*
Alene Ross Levy
HAYNES AND BOONE, LLP
1221 McKinney, Suite 2100
Houston, Texas 77010-2007
Telephone: (713) 547-2000
Telecopier: (713) 547-2600
* *Counsel of Record for Amici Curiae*

Dated: October 9, 2007.

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[4] *See, e.g., In the Interest of R.B.*, 186 S.W.3d 255 (Mo. 2006); *Wilkins v. Ferguson*, 928 A.2d 655 (D.C. 2007); *Fox v. Mina*, No. 2006-CA-002521-ME, 2007 WL 2745375 (Ky. Ct. App. Sept. 21, 2007).

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Alene Ross Levy
HAYNES AND BOONE, LLP
1221 McKinney, Suite 2100
Houston, Texas 77010-2007
Telephone: (713) 547-2000
Telecopier: (713) 547-2600

**Counsel of Record for Amici Curiae*

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INTEREST OF AMICI CURIAE

Justice for Children ("JFC") is a 501(c)(3) organization whose first and only priority is protecting children from abuse and neglect, particularly when the abuse is caused or compounded by the very court system that is supposed to protect the child. JFC is interested in this particular case for several reasons. JFC has invested thousands of hours in this and countless other cases with virtually identical circumstances and similarly tragic outcomes. As a national child protective organization, JFC is contacted daily by mothers all over the country who are living Wendy Titelman's nightmare. And in each of those cases, at least one helpless child is being victimized by an abusive parent and terrorized by a court that has delivered the victim into the hands of the abuser and cut him or her off from the only protector he or she has ever known.

JFC knows, first-hand, how vulnerable these frightened children are and how devastating their experiences are to their social, psychological and physical development. JFC also sees the burden our society must bear when these abused, neglected and ultimately betrayed children mature into adults with myriad social and psychological problems.[1]

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[1] Adverse effects on children of domestic violence, including sexual abuse, include serious emotional,

JFC is committed to doing all it can to develop a substantial body of law that will put an end to this injustice and assure the protection of these helpless victims. This Court's unequivocal condemnation of the due process and equal protection violations that occurred in Wendy Titelman's case and are being repeated in cases throughout this country would go a long way toward facilitating that goal.

Parenting Project, founded in 1996 at Mathewson Street United Methodist Church, is a volunteer community service organization that assists protective parents and their children in Rhode Island Family Court custody cases. parenting Project has documented many Parental Alienation Syndrome cases that endanger children and protective parents.

The National Coalition Against Domestic Violence (NCADV) has advocated for victims of domestic violence for nearly 30 years. It is seen as the leading expert on domestic violence in the country and has joined in numerous cases as an

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behavioral and health problems such as aggressive behavior, depression, IV drug use, alcoholism and cognitive deficiencies. Allison C. Morrill, et al., *Child Custody and Visitation Decisions When the Father Has Perpetrated Violence Against the Mother*, Vol. 11, No. 8, VIOLENCE AGAINST WOMEN 1076-1107 (2005); Peter G. Jaffe, et al., CHILDREN OF BATTERED WOMEN (Sage, 1990).

Amicus Curiae related to child custody and visitation orders.

California Protective Parents Association (CPPA) is a non-profit organization based in Sacramento, California that advocates for the safety and parental rights of abused children and their non-offending parents in family law litigation by providing research, education, and training for the state legislature, judiciary, and general public. CPPA has initiated national research to document the phenomenon of fit parents (predominantly mothers) losing custody to abusive parents (predominantly fathers), with findings that American family law courts are failing to provide safety for children and due process for protective parents, and are judicially retaliating against the complaining victims with custody rulings that limit or prohibit contact between children who disclose abuse and their parents who seek protection for them in family court.

Courageous Kids Network is a national organization of youth who speak out about how their lives were destroyed after family courts forcibly removed them from the custody of their safe parents and ordered them into the custody of the abusive parents, and the profound sense of loss and emotional trauma they endured as a result of having to live in fear with their abusers, while being deprived of the love and comfort of

their non-offending parents. The teen founders of Courageous Kids offer support to other similarly situated youngsters and make presentations at judicial seminars, family violence conferences, and legislative trainings to educate the government and the public on the need for family court reform.

Voices of Women Organizing Project (VOW) is the first initiative of the Battered Women's Resource Center, a nonprofit that works to empower survivors of domestic violence, so that they can influence, change, and improve the many systems battered women and their children rely on for safety and justice.

QUESTION PRESENTED

Should this Court grant certiorari to address the *de facto* termination of a mother's parental rights without due process of law and in violation of equal protection considering that the Georgia courts' violations are being repeated in hundreds – perhaps even thousands – of nearly identical cases all across this country?

INTRODUCTION

Justice for Children, a national child advocacy organization, National Coalition Against Domestic Violence, Parenting Project, California Protective Parents Association, Courageous Kids Network, and Voices of Women Organizing Project, file this amici curiae brief in support of Wendy Jane Titelman's petition for writ of certiorari. Amici respectfully urge the Court to grant the petition to address a national tragedy of staggering proportions.[2]

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[2] As required by Rule 37(6), amici states that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. Amici's pro bono counsel, Lynne Liberato (counsel of record) and Alene Ross Levy of Haynes and Boone, LLP, have prepared this brief without monetary contribution from Justice for Children, National Coalition Against Domestic Violence, Parenting Project, California Protective Parents Association, Courageous Kids Network, Voices of Women Organizing Project, or any other entity, party or counsel. Justice for Children, National Coalition Against Domestic Violence, Parenting Project, California Protective Parents Association, Courageous Kids Network, Voices of Women Organizing Project, and Haynes and Boone, LLP have no monetary interest in the outcome of this case. As required by Rule 37(2), amici further state that counsel of record for all parties received notice at least 10 days prior to the due date of the amici curiae's intention to file this brief.

SUMMARY OF THE ARGUMENT

An epidemic is raging throughout America's courts. A bogus "psychiatric disorder" called "Parental Alienation Syndrome" is being used in courts all across this country to give abusive parents custody of their young victims. In a shocking number of these cases, the abused children are also being abruptly, and often completely, cut off from any contact with the parent who had been their protector, thus suffering further abuse at the behest of the courts. And, incredibly, these life-altering (and sometimes life-threatening) changes are being wrought without so much as a nod to the protective parent's or the child's most fundamental due process and equal protection rights.

Imagine the terror these children endure when they are delivered into the custody and control of the abuser they have courageously reported. And imagine the overwhelming confusion and crushing despair that follows when, day after day, their protector does not come to rescue them.

How can anyone, much less a young, vulnerable child, make sense of this scenario? Lay people recoil in disbelief when they hear the details of these cases. And disbelief turns to disgust when they learn that the basis for such

court rulings is "Parental Alienation Syndrome" ("PAS"), a bogus, gender-biased theory that is not recognized by any medical or psychiatric authority, has been held inadmissible by many courts, and is the "brain child" of a charlatan who, during his lifetime, openly endorsed sexual contact between adults and children.

This case presents this Honorable Court with an opportunity to save thousands of such children from this victimization.

STATEMENT OF THE CASE

Amici adopt the Petitioner's statement of the case.

ARGUMENT

I. The due process violations in the case before this Court are being repeated in child abuse cases throughout this country.

In record numbers of cases, the parental rights of protective parents like Wendy Titelman are effectively being terminated in violation of the parents' due process and equal protection rights. But there are no pleadings, proof or findings of unfitness to satisfy the legal requirements for the drastic sanction of termination. Moreover, none of these rulings is based on the best interest of the children, the legal gold standard for custody decisions.

Rather, the basis for these rulings is a discredited "condition" called "Parental Alienation Syndrome."

In all of these cases, the procedural "drill" is the same. Couples are separated, divorcing or have recently divorced when their children disclose physical or sexual abuse by their father. Domestic violence is a component in the vast majority of these cases where custody is disputed. Peter G. Jaffe, et al., *Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes*, Vol. 54, No. 4, JUV. AND FAMILY COURT J., 57-67 (2003) (finding domestic violence was an issue in 75% of cases in one sample in which parents were referred for custody evaluations); Janet R. Johnston and Linda E. Campbell, IMPASSES OF DIVORCE: THE DYNAMICS AND RESOLUTION OF FAMILY CONFLICT (The Free Press, 1999) (finding domestic violence was a factor in 70%-75% of the marriages of parents referred by family court to counseling because of ongoing conflict over their children).[3]

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[3] Studies of domestic violence cases where custody is not an issue show that a high percentage of those cases involve child abuse as well. In fact, studies have shown that "intimate partner violence" is a strong predictor of child abuse with the risk increasing from 5% after one act of such violence to 100% after 50 acts. Susan M. Ross, *Risk of Physical Abuse to Children of Spouse Abusing Parents*, Vol. 20, No. 7 CHILD ABUSE & NEGLECT: THE INT'L JOURNAL 589-98 (1996). Simply put, fathers who commit domestic violence are highly likely to abuse their children.

Sometimes the abuse is disclosed to the mother, but often the confidant is another adult – a teacher, family member, school nurse, doctor or therapist who is seeing the child for problems that may or may not be related to the breakdown of the marriage. In every state, these individuals are "mandated reporters" of suspected child abuse. *See, e.g., Dobson v. Harris*, 530 S.E.2d 829, 833 (N.C. 2000) "[A]ll fifty states have codified mandatory reporting statutes that impose a duty to report suspected or observed child abuse ...."). Georgia is no exception. *See O'Heron v. Blaney*, 583 S.E.2d 834, 836 (Ga. 2003). And while some states do not include parents in their reporting statutes, a mother who fails to report a child's outcry of abuse risks being found unfit and losing custody of her children. *See, e.g., In re A.R.*, -- S.E.2d --, 2007 WL 2386592 (Ga. App. Aug. 22, 2007) (citing *In the Interest of J.V.*, 526 S.E.2d 386 (Ga. 1999).

Through one source or the other, the family court is informed of the child's allegations and protections are sought pending an investigation. But the expected protection never materializes. Instead, the protective mother suddenly finds herself "the accused" under a bogus theory called "Parental Alienation Syndrome," the unsupported premise of which is that virtually all allegations of sexual abuse that arise in divorce and custody cases are "programmed" by a

vindictive mother who is trying to "alienate" her children from the father. Fathers who assert PAS typically present "experts" like Richard Gardner, the founder of PAS, whose testimony effectively tells the judge or jury that the mother and child are lying.[4]

The father also argues and his expert testifies, in keeping with Gardner's theory, that the only way to counteract the "alienation" is to award full custody to the alleged abuser. Richard A. Gardner, *The Judiciary's Role in the Etiology, Symptom Development, and Treatment of the Parental Alienation Syndrome* (PAS), 21(1) AM. J. FORENSIC PSY. 39-64 (2003).[5]

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[4] As Jill Zuccardy points out, such testimony invades the province of the fact-finder and should not be admitted. *See Battered Mothers' Testimony Project: A Human Rights Approach to Child Custody and Domestic Violence*, ARIZONA COALITION AGAINST DOMESTIC VIOLENCE at 23 (2003), citing *State v. Lindsey*, 720 P.2d 73, 74 (Ariz. 1986).

[5] Abusive fathers are more likely to seek custody than non-violent ones. THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS, Ch. 5, p. 156 (Bancroft & Silverman 2002). The American Psychological Association found that fathers who batter mothers are twice as likely as nonviolent fathers to seek custody of their children. *Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family* (APA 1996). And they are successful about 70% of the time. *Domestic Violence & the Courtroom Understanding the Problem . . . Knowing the Victim* (American Judges Found.).

had custody at the time of separation. However, because they reported child abuse, 45% of the mothers were accused of PAS, and only 27% still had custody after the court proceedings. Most of those who lost custody had no notice of the hearing and the *ex parte* hearing was not reported. Ninety-seven percent said that court personnel threatened to punish them for their efforts to protect their children and 65% were threatened with sanctions for talking publicly about their case. The average cost of the cases was more than $80,000, which caused over 25% of the mothers to file bankruptcy. Although 87% believed their children still were being abused, they had stopped reporting abuse out of fear that all contact with their children would be terminated. Eleven percent of the children had attempted suicide. G.B. Stahly, et al, *Protective Mothers in Child Custody Disputes: A Study of Judicial Abuse* (California State University 2004); *Disorder in the Courts: Mothers and Their Allies Take on the Family Law System* (a collection of essays), electronic download *available at* http://store.canow.org/products.php?prod_id=3.

In a 2001 study of 38 state appellate court cases that involved custody and domestic violence, 36 of the 38 trial courts had awarded joint or sole custody to alleged *and adjudicated* batterers. *See, e.g., In re*

Custody of Zia, 736 N.E.2d 449 (Mass. App. Ct. 2000) (custody awarded to father who had been repeatedly convicted of domestic assault); *Kent v. Green*, 701 So. 2d 4 (Ala. Civ. App. 1996) (father given sole custody of 16-month old baby despite his violent assault on and subsequent arrest for injury to the mother that required her hospitalization); *Couch v. Couch*, 978 S.W.2d 505 (Mo. App. 1998) (father given custody after he broke the mother's collarbone); *Simmons v. Simmons*, 649 So. 2d 799, 802 (La. App. Ct. 1995) (father given custody after violent acts); *Hamilton v. Hamilton*, 886 S.W.2d 711, 715 (Mo. App. 1994) (father given custody after admitting that he committed two assaults). Two-thirds of these decisions were reversed on appeal. However, one of the reversals was a case – one of the only two – that had favored the mother. Joan S. Meier, *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, Vol. 11, No. 2 GENDER, SOCIAL POL'Y & THE LAW 657-731 & n.19 (2003).

A study of 300 custody cases that examined judicial reaction to protective parents' complaints of child sexual abuse found that primary custody was given to the protective parent and supervised contact was ordered for the abuser in only 10% of the cases. In

20% of the cases, the child was placed in the primary legal and physical custody of the allegedly sexual abusive parent (the father) and the mother completely lost custody. In the rest of the cases (70%), the courts ordered joint custody with no provision for supervision of the child's time with the alleged abuser. Neustein & Goetting, *Judicial Responses to the Protective Parent's Complaints of Child Sexual Abuse*, Vol. 8, No. 4 JOURNAL OF CHILD SEXUAL ABUSE 103-122 (1999).

In a study of 60 custody disputes, fathers who contested custody won sole custody in 82% of the cases even though 59% had abused their wives. Only 13% of the fathers had been involved in child care activities before the divorce. *See* Phyllis Chesler, MOTHERS ON TRIAL: THE BATTLE FOR CHILDREN AND CUSTODY (McGraw-Hill 1986).

A study on gender bias in the California courts found that negative stereotypes about women encourage courts to doubt their allegations of child sexual abuse. "One striking example is the tendency to doubt the credibility of women who make these allegations, characterizing them as hysterical or vindictive — even when medical evidence corroborates a claim of child abuse." ACHIEVING EQUAL JUSTICE FOR WOMEN AND

MEN IN THE CALIFORNIA COURTS, Final Report, Judicial Council of California Advisory Committee on Gender Bias in the Courts 150 (Gay Danforth & Bobbie Welling eds., 1996).

A study by the Arizona Coalition Against Domestic Violence found that courts awarded joint or sole custody to alleged batterers 56-74% of the time. Many of the cases involved documented child or spousal abuse. ARIZONA COALITION AGAINST DOMESTIC VIOLENCE, BATTERED MOTHERS' TESTIMONY PROJECT: A HUMAN RIGHTS APPROACH TO CHILD CUSTODY AND DOMESTIC VIOLENCE at 6-7 (2003).

The American Judges' Foundation found that fathers often are awarded sole custody even when there is substantiated abuse of their children. "Abusers convince the court to give them custody 70% of the time." *Domestic Violence & the Courtroom: Understanding the Problem . . . Knowing the Victim, available at* http://aja.ncsc.dni.us/domviol/booklet.html.

As these statistics suggest, the safety and security of our country's most vulnerable citizens is being compromised over and over again through the same flawed legal processes that have affected the Titelman children. This Court's action is clearly warranted and

desperately needed if the current trend is to be reversed.

II. "Parental Alienation Syndrome" is the worst kind of junk science.

"Parental Alienation Syndrome" (PAS) is the creation of one man, Richard Gardner, M.D., an unpaid part-time clinical professor of child psychiatry on Columbia University's volunteer faculty, whose primary source of income was his appearance as an expert witness for fathers in custody cases. Gardner first described the so-called syndrome, based purely on anecdotal evidence gathered from his own practice, more than 20 years ago. *See* Richard A. Gardner, *Recent Trends in Divorce and Custody Litigation*, Vol. 29, No. 2 ACADEMY FORUM (Summer 1985).

More recently, Gardner stated the definition thusly:

> The parental alienation syndrome (PAS) is a childhood disorder that arises almost exclusively in the context of child–custody disputes. Its primary manifestation is the child's campaign of denigration against a parent, a campaign that has no justification. It results from the combination of a programming (brainwashing) parent's indoctrinations and the child's own

> contributions to the vilification of the target parent.

Richard A. Gardner, *Parental Alienation Syndrome vs. Parental Alienation: Which Diagnosis Should Evaluators Use in Child-Custody Disputes?* AM. J. FAM. THERAPY (2002).[8]

As his definition suggests, Gardner, who committed suicide in 2003, believed that the vast majority of sexual abuse allegations in divorce and custody cases are false, and he defined his "syndrome" as a defense to those allegations. That is the logical fallacy in Gardner's theory: PAS assumes (falsity) what it seeks to prove (falsity).

There is no valid basis for Gardner's premise that almost all claims of abuse in the context of custody litigation are false. Gardner justified his

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[8] All of Gardner's writings are self-published, most through his own company, Creative Therapeutics, and a few in non-peer reviewed publications. While his publications in legal periodicals may seem weighty, they are not peer-reviewed by psychiatrists or psychologists, a threshold qualification for acceptance in any scientific community. *See* Cheri L. Wood, *The Parental Alienation Syndrome: A Dangerous Aura of Reliability*, 27 LOY. L.A. LAW REV. 1367 (1994). Although Gardner's "research" was limited solely to observations in his own practice, he maintained that PAS is a rampant problem, occurring in at least 90% of his caseload. Richard A. Gardner, THE PARENTAL ALIENATION SYNDROME: A GUIDE FOR MENTAL HEALTH AND LEGAL PROFESSIONALS at 59 (1998).

assumption simply because allegations of abuse frequently arise for the first time during a divorce. However, there are many credible reasons why a child might not reveal abuse until the parents are divorcing. For example, the child may not have felt safe revealing the abuse while the abuser was still living in the home but after separation may feel more secure. On the other hand, a child who is spending more time alone with the abuser after separation may seek protection because he/she is feeling more threatened. In some cases, the child may have feared that his or her disclosure would not be believed, but that fear abates after the parents separate. In other cases, the abuse does not begin until after the parents have separated.[9]

In short, the timing of a child's revelation of abuse has no bearing on its merit. Research repeatedly has confirmed that there is not a higher incidence of false allegations of abuse in the context of custody disputes. The American Psychological Association found that "false reporting of family violence occurs infrequently" and does not increase during divorce or custody cases. REPORT OF THE AMERICAN PSYCHOLOGICAL

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[9] A batterer's motivation to intimidate and control his spouse through the children often increases after separation, due to loss of other methods of control. THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS, Ch. 2, p. 44 (Bancroft & Silverman 2002).

ASSOCIATION PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY at 12 n.2 (APA 1996). *See also* Thoennes & Tjaden, *The Extent, Nature and Validity of Sexual Abuse Allegations in Custody and Visitation Disputes*, Vol. 14, No. 2 CHILD SEXUAL ABUSE & NEGLECT at 151-63 (1990) (finding that child sexual abuse allegations in custody cases are rare – about 6% – and the majority of such allegations – 66% – are substantiated).[10]

In fact, false allegations are no more common in divorce or custody disputes than at any other time. *See* Brown, Frederico, Hewitt & Sheehan, *Revealing the Existence of Child Abuse in the Context of Marital Breakdown and Custody and Access Disputes*, Vol. 24, No. 6 CHILD ABUSE & NEGLECT 849-859 (2000). And when false accusations intentionally are made, fathers have been found far more likely than mothers to have made them (21% compared to 1.3%). Bala & Schuman, *Allegations of Sexual Abuse When Parents Have Separated*, 17 CAN. FAM. L. Q. 191-241 (2000). Still, thanks to PAS, officers of the court tend to be unreasonably suspicious when mothers report abuse of their children.

As these statistics reveal, PAS is dangerous junk science. Accordingly, it has been widely

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[10] The remaining allegations are not necessarily disproved. They simply may not have been established with certainty.

rejected by mental health researchers and experts alike. *See* American Psychological Association, STATEMENT ON PARENTAL ALIENATION SYNDROME (APA 2005) ("An APA 1996 Presidential Task Force on Violence and the Family noted the lack of data to support so-called 'parental alienation syndrome' and raised concern about the term's use."); American Psychiatric Association, CONTROVERSIAL SYNDROME ARISES IN CHILD-CUSTODY BATTLES (APA 2000) (noting that PAS is not included in the DSM-IV and is not generally accepted in the scientific community); John Myers, *Expert Testimony Describing Psychological Syndromes*, 24 PAC. L. REV. 1449, 1455 n.21, 1462 (1993) (PAS is not a diagnostic tool; it "provides no insight" and should not be admissible to prove causation). *See Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923); *Daubert v. Merrell Dow Pharm., Inc.*, 113 S. Ct. 2786, 2792-93 (1993); *see also People v. Fortin*, 706 N.Y.S.2d 611, 612 (Crim. Ct. 2000). Dr. Gardner offered to testify on behalf of Fortin, the accused in a criminal sex abuse case, concerning PAS and the credibility of the complainant. The court refused to admit his testimony because it was not shown that PAS is generally accepted within the professional community.)[11]

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[11] PAS is not recognized as a "syndrome" by the medical/psychiatric community. In the late 1980s, when psychiatrists were revising the profession's Diagnostic and Statistical Manual (DSM), Dr. Robert Spitzer, professor of

III. "Parental Alienation Syndrome" does not satisfy the burden of proof for termination of parental rights in any state.

PAS does not satisfy the burden of proof under Georgia's or any other state's law upon which a court can take the drastic step of terminating parental rights. As summarized below, under the law that was in effect at the time Wendy Titelman's contact with her

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psychiatry at Columbia University College of Physicians and Surgeons was leading the effort. Gardner, who had an unpaid clinical appointment on Columbia's voluntary faculty, reportedly asked if Parental Alienation Syndrome would be included. Spitzer said "It would never be taken seriously . . . It isn't a mental disorder." Similarly, Harvard's Dr. Eli Newberger, an assistant professor of pediatrics and an expert on child abuse said he's been called on by state child protection agencies to evaluate ambiguous disclosures of abuse in divorce cases, and believes that PAS deflects any real investigation into such allegations. According to Newberger, Gardner's theory is at the center of the controversy. "This is an atrocious theory with no science to back it up . . . This so-called diagnosis has been used to steer clear of children's needs. . . . The court's acceptance of the diagnosis without the psychiatric profession's endorsement is 'dangerous,'" Newberger stressed. Still, PAS has endured, perhaps, said psychiatrist Joyanna Silberg, because it is rare in family courts for lawyers or judges "to question the expert testimony of a psychiatrist with a long list of seemingly impressive credentials and dozens of professional-looking books and journal articles." Jamie Talan, *The Debate Rages On . . . In Death, Can He Survive?* Newsday.com, July 1, 2003, *available at* http://www.leadershipcouncil.org/1/pas/talan.html.

daughters was abruptly severed, termination required proof of the following:

> (a) ...the court shall first determine whether there is present clear and convincing evidence of parental misconduct or inability as provided in subsection (b) of this code section. If there is clear and convincing evidence of parental misconduct or inability, the court shall then consider whether termination of parental rights is in the best interest of the child ...
>
> (b) ... the court by Order may terminate the parental rights of a parent ... if:
>
> (1) the written consent of the parent ... has been given ...;
>
> (2) ... the parent ... has wantonly and willfully failed to comply with [a support order] for a period of 12 months or longer;
>
> (3) the parent has abandoned the child ...;
>
> (4)(A) The court determines parental misconduct or inability by finding that:

(i) The child is a deprived child, as defined in § 15-11-2;

(ii) The lack of proper parental care or control ... is the cause of the child's status as deprived;

(iii) Such cause of deprivation is likely to continue or will not likely be remedied;

(iv) The continued deprivation will cause or is likely to cause serious physical, mental, emotional or moral harm to the child.

(B) In determining whether the child is without proper parental care and control, the court shall consider, without being limited to, the following:

(i) A medically verifiable deficiency of the parent's physical, mental, or emotional health of such duration or nature as to render the parent unable to provide adequately for the ... child;

(ii) excessive use of or history of chronic unrehabilitated abuse of intoxicating liquors or narcotic or dangerous drugs or controlled substances ... rendering the parent incapable of providing adequately for ... the child;

(iii) Conviction of the parent of a felony and imprisonment therefore which has a demonstrable negative effect on the quality of the parent-child relationship;

(iv) Egregious conduct or evidence of past egregious conduct of the parent toward the child or toward another child of a physically, emotionally, or sexually cruel or abusive nature;

(v) Physical, mental or emotional neglect of the child ... or of another child by the parent; and

(vi) Injury or death of a sibling under circumstances which constitute substantial evidence that such injury or death

> resulted from parental neglect or abuse....
>
> (5) The parent has been convicted of the murder of the child's other parent.

OCGA § 15-11-94; *see also In re A.L.E.*, 546 S.E.2d 319, 323 (2001) (statutory criteria for termination of parental rights are the two-step procedure provided in OCGA § 15-11-94, formerly codified at OCGA § 15-11-81(a)); *In re T.L.H.*, 523 S.E.2d 50, 51 (1999) (court must first determine whether clear and convincing evidence exists of parental misconduct or inability under § 15-11-81(a), and, if it does, then decide whether termination is in the best interest of the children).

The trial court summarily abandoned this exacting standard in favor of PAS. There was no pleading, proof or findings on any of the factors that would support termination in Wendy Titelman's case.

A. PAS violates a woman's constitutional right to equal protection under the law.

PAS is inherently gender biased. First, according to Gardner, PAS is almost exclusively a female problem. Richard A. Gardner, THE PARENTAL ALIENATION SYNDROME: A GUIDE FOR

MENTAL HEALTH AND LEGAL PROFESSIONALS, at 61-62 (Creative Therapeutics 1992). PAS is almost always raised by fathers who seek custody in cases where there is a history of domestic violence and/or child abuse. They seek custody to maintain or extend their control and authority over their victims (spouse and/or children) after separation.

Because of these circumstances, women accused of PAS are at a significant disadvantage in court. Most women accused of PAS are victims of domestic violence, and, because of that trauma, they may seem hostile, incoherent and agitated. THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS, Ch. 5, p. 118 (Bancroft & Silverman 2002). Because the woman appears anxious, stressed and upset, she may be portrayed as unbalanced and obsessive. Merrilyn McDonald, *The Myth of Epidemic False Allegations of Sexual Abuse in Divorce Cases*, COURT REVIEW at 12-19 (Spring 1998). In addition, the woman may be reluctant to disclose the violence because of embarrassment or the pain of retelling her experiences. Resulting inconsistencies or gaps in her story may raise suspicion that she is fabricating. Clare Dalton, *When Paradigms Collide: Protecting Battered Parents and their Children in the Family Court System*, 37 FAM. & CONCILIATION COURTS REV. 273-96 (1999). These women's behavior, reasonable as a response to

and protection against the violence they have suffered, may be misinterpreted as a sign of instability.

PAS also promotes and capitalizes on negative stereotypes of women, further encouraging judges to disbelieve their allegations of child sexual abuse. ACHIEVING EQUAL JUSTICE FOR WOMEN AND MEN IN THE CALIFORNIA COURTS, Final Report, Judicial Council of California Advisory Committee on Gender Bias in the Courts (Gay Danforth & Bobbie Welling eds., 1996) (such stereotypes include seeing women as hysterical, exaggerating, obsessive, vindictive).

In contrast, "many perpetrators of domestic violence are facile manipulators, presenting themselves as caring, cooperative parents and casting the abused parent as a diminished, conflict-inciting, impulsive or over-protective parent." THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE: A LAWYER'S HANDBOOK, ABA Commission on Domestic Violence. They are often charming and well versed in manipulation tactics, and they can make excellent witnesses who testify in a calm and poised manner. L.M. Sanctis, *Bridging the Gap Between the Rules of Evidence and Justice for Victims of Domestic Violence*, 8 YALE J. L. & FEMINISM 359-407 (1996). In many cases they "pathologize" their ex-wives while presenting

themselves as the rational, reasonable and logical parent. P. Susan Penfold, *Questionable Beliefs About Child Sexual Abuse Allegations During Custody Disputes*, 14 CAN. J. FAM. L. 11-30 (1997).

The abusive partner has other advantages in custody litigation. He typically can afford good legal representation; he performs better than his traumatized victim in psychological testing; he is better able to manipulate custody evaluators to garner their sympathy; and he has the power to intimidate the children regarding their statements to the evaluator and others. Bancroft & Silverman, *supra*.

B. PAS endangers children.

Cases decided under PAS are establishing a precedent that endanger the safety and health of our children nationwide. PAS presents a protective parent with a dilemma that no parent should ever have to face: a choice between protecting her children and the increasingly valid fear that reporting suspected abuse will result in a loss of custody. Because of this fear, PAS is silencing protective parents and enabling abusers. *See, e.g.*, A.C. Morrill, et al, *Child Custody and Visitation Decisions*, Vol. 11, No. 8 VIOLENCE AGAINST WOMEN 1076-1107 (2005). To make matters worse, PAS violates virtually all custody statutes by impermissibly subordinating

the best interests of the children to punishment of the protective parent.

The ultimate danger of PAS is that it allows – even encourages – a court and/or a jury to completely disregard a child's outcry of abuse at the hands of one parent by attributing those allegations solely to "alienation" by the other parent. The tables are turned; the protective parent becomes the "villain;" and the child is forgotten. In many cases, the child's claims of abuse are never investigated. In other cases, clear and convincing evidence of the abuse, including doctors', therapists' and court evaluators' conclusions of validity, is excluded or ignored. The court's focus is trained exclusively on the protective parent's allegedly "alienating" conduct.

Paul Fink, M.D., a past president of the APA and the Leadership Council on Mental Health, Justice and the Media, summed up the situation: "I am very concerned about the influence Gardner and his pseudo-science are having on the courts in cases involving alleged child sexual abuse. Once the judge accepts PAS, it is easy to conclude that the abuse allegations are false, and the courts award custody to alleged or proven perpetrators. . . .We don't know if the allegations are true or not, but this is a matter for the courts to decide. When Gardner proclaims that PAS is a syndrome. . . he

undermines the seriousness of sexual abuse allegations."[12]

Nevertheless, PAS repeatedly is used, successfully, to divert attention from domestic violence and child abuse, and its popularity continues to grow. It provides an explanation for conduct that most people prefer to believe does not exist. By offering a reason for the child's fear or anger, PAS allows the court to avoid the highly charged issue of child sexual abuse. The loser is the forgotten child.

C. Gardner's pro-pedophilia writings further reveal the bias of PAS.

Gardner's theory makes sense only when viewed through the prism of his open acceptance and endorsement of pedophilia. During his lifetime, Gardner took the following positions:

> There is a bit of pedophilia in every one of us. [Pedophilia] is a widespread and accepted practice among literally billions of people. [I]ntrafamilial pedophilia [incest] . . . is probably an ancient tradition.

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[12] *See* Christine Lehmann, *Controversial Syndrome Arises in Child-Custody Battles*, PSYCHIATRIC NEWS (September 1, 2000).

Gardner believed sex abuse was not necessarily traumatic. Rather, the determinant as to whether sexual molestation will be traumatic to the child, is the social attitude toward these encounters. "It is because our society overreacts to it [pedophilia] that children suffer."

Children are naturally sexual and may initiate sexual encounters by "seducing" the adult. If the sexual relationship is discovered, "the child is likely to fabricate so that the adult will be blamed for the initiation."

Gardner warned that special care should be taken not to alienate the child from the molesting parent. The child should be told that there is no such thing as a perfect parent. "The sexual exploitation has to be put on the negative list, but positives as well must be appreciated." Older children may be helped to appreciate that sexual encounters between an adult and a child are not universally shunned. The child might be told about other societies in which such behavior was and is considered normal. The child might be helped to appreciate the wisdom of Shakespeare's Hamlet who said, "Nothing's either good or bad, but thinking makes it so...."

And the mother may be to blame for the abuse. "The mother [may be] psychologically gratifying [her own sexually inhibited needs] with the visual imagery that the sex abuse allegation provides." The therapist should encourage the mother to become more sexually responsive. "Her increased sexuality may lessen the need for her husband to return to their daughter for sexual gratification." Or "it may be that one of the reasons the daughter turned toward the father is the impairment of the child's relationship with the mother." "If the mother has reacted to the abuse in a hysterical fashion, or used it as an excuse for a campaign of denigration of the father, then the therapist does well to try and 'sober her up'.... "

The father should be told that he has had bad luck concerning the place and time he was born with regard to social attitudes toward pedophilia. However, these are not reasons to condemn himself.

Child abuse allegations are the "third-greatest wave of hysteria" the nation has seen, following the Salem witch trials and McCarthy's persecution of leftists.

> "One of the steps that society must take to deal with the present hysteria [concerning child sexual abuse] is to 'come off it' and take a more realistic attitude toward pedophilic behavior.... The Draconian punishments meted out to pedophiles go far beyond what I consider to be the gravity of the crime."

Richard A. Gardner, SEX ABUSE HYSTERIA: SALEM WITCH TRIALS REVISITED at 31, 36-37, 118-120 (Creative Therapeutics 1991); TRUE AND FALSE ACCUSATIONS OF CHILD SEX ABUSE, at 537, 549, 572, 576-77; 579-80, 585, 594-95, 670-72 (Creative Therapeutics 1992); CHILD CUSTODY LITIGATION: A GUIDE FOR PARENTS AND MENTAL HEALTH PROFESSIONALS at 93 (Creative Therapeutics 1986); *Modern Witch Hunt—Child Abuse Charges*, THE WALL STREET JOURNAL, February 22, 1993.[13]

Seen in the context of Gardner's aberrant beliefs, the bias and the danger of PAS is obvious. Many theories have been advanced to explain the popularity of the theory among family law judges, most of whom are probably ignorant of its origins. But those theories are irrelevant here. Whatever the basis for the acceptance of PAS, there is no justification for

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[13] Collected in Overview of Dr. Richard Gardner's Opinions on Pedophilia and Child Sexual Abuse, found at www.leadershipcouncil.org/1/pas/RAG.html.

any court's reliance on it. Nevertheless, in the past 10 years, the popularity of PAS has soared, and the shocking practice of changing of custody as "punishment" for reporting abuse is widespread.

CONCLUSION AND PRAYER

A court violates a parent's fundamental rights to due process and equal protection when it effectively terminates the relationship between the parent and child under the gender-biased Parental Alienation Syndrome without notice to the affected parent or any meaningful opportunity to be heard. In addition, the court tramples on the same fundamental rights of the children whose safety, welfare and preferences are summarily disregarded.

When a child alleges abuse, our courts have an absolute duty, both legal and moral, to investigate those charges. Failure to do so places a potentially victimized child at even greater risk of harm. A court abdicates its duty if it instead relies on "junk" science like PAS. The "best interests of the child" – the legal benchmark in custody decisions – flies out the window, and the child becomes just another pawn in the bitter divorce process.

Amici Curiae, Justice for Children, National Coalition Against Domestic Violence, Parenting

Project, California Protective Parents Association, and Courageous Kids Network, urge this Court to grant certiorari to address the trial court's *de facto* termination of Wendy Titelman's parental rights and make clear that the due process and equal protection violations in this case must not be tolerated.

Respectfully submitted,

Lynne Liberato*
Alene Ross Levy
HAYNES AND BOONE, LLP
1221 McKinney, Suite 2100
Houston, Texas 77010-2007
Telephone: (713) 547-2000
Telecopier: (713) 547-2600

**Counsel of Record for Amici Curiae*

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